REMARKS

I. Status of Claims

Claims 1-35 are pending. Claims 4, 6, 7, 13, 15-21, 24-29, 31, 33, and 34 stand withdrawn from consideration as reciting non-elected subject matter. The claims are not amended herein.

II. Priority

The specification is amended herein to include a claim of priority to French Patent Application No. 02 15076. The foreign priority claim under 35 U.S.C. § 119 was made in the Application Data Sheet filed November 26, 2003 and in the Claim for Priority filed April 26, 2004.

The Examiner notes that a certified English translation of U.S. Provisional Application No. 60/434,665 ("the '665 application") was not filed in either the provisional application or the instant application. *See* Office Action at 3-4. In response, Applicants submit, as Exhibit A, a copy of the transmittal letter confirming the filing of the certified English translation in the '665 application at the U.S. Patent and Trademark Office.

Applicants submit that reference to the provisional application was included in the first sentence of the instant application within the time period set forth in 37 C.F.R. § 1.78(a); therefore, Applicants assert that the priority claim was timely made and a petition to accept an unintentionally delayed benefit claim is not necessary. Accordingly, Applicants respectfully request that the Examiner withdraw this objection.

III. Rejections Under 35 U.S.C. § 103(a)

The Office rejected claims 1-3, 5, 8-12, 14, 22, 23, 30, 32, and 35 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,361,767 to Malle et al. ("the '767 patent"). *See* Office Action at 5. Applicants respectfully disagree and traverse these rejections for the reasons discussed below.

The '767 patent describes a method for treating hair keratin fibers by reducing the sulphur bonds to generate reactive sites and covalently fixing at least one active compound to the reactive sites. *See* abstract. The present application at page 1, paragraph [008], discusses WO 98/38974, which is the published International Application to which the '767 patent claims priority:

> Patent application WO 98/38974 describes a process for treating a keratin substrate, comprising reducing the disulphide linkages of keratin, followed by reacting the keratin with an active compound.

In sharp contrast, the present invention is directed to a process for the cosmetic treatment of hair involving non-reducing activation of the hair. *See, e.g.,* claim 1.

The Examiner, pointing at col. 2, ll. 1-8, contends that the '767 patent teaches a two-step treatment method. *See* Office Action at 7. Applicants note that the treatment method of the '767 patent recites (1) activating the hair by reducing the disulphide bonds of the keratin and (2) fixing the active compound to the activated hair. *See* col. 2, ll. 1-8. In contrast, the presently claimed process recites (1) activating the hair by non-reducing activation and (2) fixing the active compound to the activated hair. *See,*

e.g., claim 1. Thus, while both processes do indeed have two steps, the processes are completely disparate.

Indeed, the Examiner states that Example 1, method 8 of the '767 patent "teaches reducing hair locks with polyethyleneimine." Office Action at 7-8. In fact, Example 1, method 8, teaches application of a polyethyleneimine polymer carrying thiol functions to the hair in a reduction step. *See* col. 11, ll. 43-67. The '767 patent also generally teaches the use of hyperbranched polymers or dendrimers carrying thiol functions as hair reducing agents. *See* col. 2, ll. 35-67. The polyethyleneimine disclosed in Example 1, method 8 of the '767 patent carries thiol functions and, as recognized by the Examiner, is used as a hair reducing agent. In sharp contrast, in the present invention, the polyethyleneimines are used for the non-reducing activation of the hair. Thus, Example 1, method 8, serves to exemplify how the '767 patent is completely different from the present invention.

Furthermore, while the Examiner points to the disclosure of nucleofuges at col. 7, ll. 40-45 of the '767 patent, Applicants note that such nucleofuges cannot serve as the polyalkyleneamines of the present invention, because they are not polymeric compounds. Rather, such nucleofuges are merely compounds that may include a pyridine ring or a ring comprising two nitrogen atoms. In addition, Applicants note that the '767 patent teaches the use of such nucleofuges only after the disulphide bonds of the keratin are reduced. *See* col. 7, ll. 16-19. The '767 patent is completely silent with respect to the use of polyalkyleneimines, or any other compound, as an agent for the non-reducing activation of the hair. Rather, the '767 patent teaches the reduction of the disulphide bonds to form "active sites" having nucleophilic functions, followed by the

application of nucleofuges to facilitate the covalent bonding of the active agent to the nucleophilic functions of the fibers. *See* col. 7, ll. 20-35.

Thus, in the case of active agents which are incapable of forming covalent bonds with the nucleophilic functions, the '767 patent actually teaches a three-step process: (1) reducing the sulphide bonds of the keratin fibers, (2) application of the nucleofuge, and (3) application of the active compound. Again, in contrast to the '767 patent, the presently claimed invention does not recite a step involving the reduction of sulphide bonds of the keratin. Moreover, there is nothing in the '767 patent which teaches or suggests to the skilled artisan that the treatment method can be carried out without first performing the first step of reducing the sulphide bonds. Indeed, eliminating the first reducing step of the treatment method of the '767 patent would be completely destructive to the teachings of the reference. As such, "[i]f the proposed modification or combination of the prior art would change the principle operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." M.P.E.P. § 2143.01 (VI) (citing *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959)).

For at least these reasons, the '767 patent does not teach or suggest the presently claimed invention and, in fact, teaches away from the presently claimed invention. Thus, the '767 patent cannot serve as a proper basis for a *prima facie* case of obviousness and the rejection should be withdrawn.

IV. Conclusion

In view of the foregoing, Applicants respectfully request reconsideration of the pending claims and their timely allowance.

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Respectfully submitted,

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